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From:

Sent: Wednesday, October 28, 2009 2:40:31 PM

To:

Cc:

Subject: 107 Case

This e-mail is follow-up to our conversation today regarding an agent's questions about the eligibility of a taxpayer, an ordained minister currently undergoing exam, to take a housing allowance per section 107.

The taxpayer is employed by a university. You determined that for the taxpayer to be eligible for the housing allowance, the university would need to meet the definition of an integral agency under the Code. After reviewing the information you sent to us, we would need more facts before we would rule on whether the university is an integral agency or not. However, based on the information we do have it appears there is a strong argument leading toward the university being an integral agency. [REDACTED]

We would also point out that the housing allowance under section 107 can only be taken if it is properly designated, as defined in the regulations and in case law. Section 1.107-1(b) requires that the rental allowance be designated pursuant official action taken in advance of the tax year by the employing church or other qualified organization. The regulations state the designation may be evidenced "in an employment contract, in minutes of or in a resolution by a church or other qualifying organization, or in its budget, or in any other appropriate instrument evidencing such official action." There is no requirement that the designation be in writing if official action prior to the tax year is made clear by the evidence (Libman v. Commissioner, T.C. Memo 1982-377). The regulations also require that the designation be sufficient, meaning the portion of salary that is a housing allowance is clearly identified as such. [REDACTED]

We'll talk further after you get additional information.